

An underlying principle of all equal employment law is that applicants for employment and employees shall be treated equally regardless of age, race, color, creed, disability, arrest or conviction records, national origin, ancestry, marital status, sexual orientation, sex, membership in the military reserves or use or nonuse of lawful products. This principal applies to pregnant employees.

Any procedure that treats pregnant females less favorably than other employees who have temporary disabilities is sex discrimination according to both state and federal laws. It is illegal for an employer to use pregnancy as a reason to take any adverse personnel action that would not have been undertaken otherwise, including lay-off, reduced responsibilities or reduced pay. Wisconsin also requires some parents be allowed unpaid leave in connection with births and adoptions.

Here are the answers to some common questions about maternity benefits.

Q. May an employer refuse to hire a woman because she is pregnant?

A. No. If the woman meets the qualifications required for the job, she may not be denied employment simply because she is pregnant.

Q. Is a woman required to tell an employer when she applies for a job, that she is pregnant?

A. No. She is not required to do so under either state or federal laws.

Q. May employers ask a woman if she is pregnant or is planning on having children in the near future?

A. An employer may not ask a question that applies to only one group of applicants and not to another, if the only difference between the groups is a characteristic or status protected by the Fair Employment Law. Furthermore, the employer may not ask or use the information obtained from a question to discriminate against a person because of that person's membership in a protected category. Since only women may become pregnant and bear children, questioning about these matters can be discriminatory. The use of questions about an applicant's intent to have children may also be discriminatory, even if both men and woman are asked.

Q. What is an employer's obligation to an employee who is temporarily unable to perform her job because of pregnancy?

A. An employer is required to treat an employee unable to perform her job because of her pregnancy in the same manner as it treats other **temporarily** disabled employees, whether by providing modified tasks, alternative assignments, disability leave or leave without pay.

The employer should provide the same benefits to employees disabled by pregnancy as it provides to other **temporarily** disabled persons.

Additionally, employers with 50 or more permanent employees must allow covered employees up to six weeks of family leave in a 12-month period, without pay, for the birth of the employee's child if the leave begins within 16 weeks of the child's birth.

Q. May an employer legally discipline or terminate a pregnant employee?

A. Yes. Any employee may be disciplined or terminated for cause. An employer may impose the same discipline on a pregnant employee as on any other employee. If a complaint is filed, discrimination will not be found if the employer can document that the discipline or termination was for willful neglect of job duties, or for failure to follow work rules that are enforced impartially on all employees.

Q. May employers discharge or discipline a woman because she has or is contemplating terminating a pregnancy?

A. No. An employer cannot discriminate in its employment practices against a woman because of any pregnancy-related conditions.

Q. May an employer discharge, refuse to hire or discipline a woman because she is pregnant and not married?

A. No. An employer may not treat a pregnant employee any differently on the basis of her marital status. An employer must also provide maternity insurance benefits to employees without regard to the employee's marital status. Though this will not necessarily include coverage for a newborn child, an employer may not offer dependent coverage to some employees and not others on the basis of sex.

Q. May employers force an employee to take maternity leave at some arbitrary point in her pregnancy?

A. No. An employer may not force an employee to go on leave unless she is unable to perform the functions of her job. The timing and length of temporary disability leave should be determined between the employee and her doctor, as are other medical absences.

Q. What if customer's or co-workers are uncomfortable with a pregnant employee performing the job?

A. Co-worker or customer preference is not a valid reason for refusing to allow the pregnant employee to continue performing her job, if she is able.

Q. Must employers hold open the job of an employee who is absent on leave because she is temporarily disabled by a pregnancy-related condition? A. A pregnant employee's job must be held open for her return on the same basis as jobs are held open for employees on sick or disability leave for other reasons.

A. If an employee is entitled to medical leave under the law and takes that medical leave in relation to a pregnancy, the returning employee must be reinstated to that employee's former position if it is vacant, or reinstated into an equivalent position with equivalent compensation, benefits, work shifts, hours, and other terms and conditions of employment if the former position is not vacant. This is also true as to both male and female employees who take family leave for bonding or child care time under the law.

Q. What if an employee wants to be off work beyond the time she is physically disabled because of her pregnancy?

A. There is a clear distinction between childbearing leave and child rearing leave. Childbearing leave (when a doctor determines the woman is temporarily disabled) should be handled the same as other temporary leaves for medical reasons. When child rearing leave is granted by an employer, it should be available to both men and women and handled on the same basis as leave for any other non-medical personal reason.

Under the Wisconsin Family and Medical Leave Law, employers with 50 or more permanent employees must allow covered employees up to six weeks of family leave in a 12-month period, without pay, for:

1. The birth of the employee's child if the leave begins within 16 weeks of the child's birth.
2. The placement of a child with the employee for adoption if the leave begins within 16 weeks of the child's placement.

Note: The federal family and medical leave law may provide additional weeks of leave. Contact the U. S. Labor Department, Wage and Hour Division.

Q. What obligations do employers have with regard to the payment of maternity benefits?

A. Employers are required to provide disability coverage for pregnancy on the same basis as they provide it for any other condition. This means that both disability income protection and medical expense insurance must cover maternity-related disabilities and maternity-related health care expenses on the same basis as for all other conditions.

Any health insurance plan offered in connection with employment must cover maternity on the same basis as other conditions, whether or not the employer makes contributions to the plan. An employer that does not have any disability coverage for employees is not obligated to provide such coverage for maternity, but must still treat the pregnant employee in the same manner as other employees who are temporarily disabled.

If any employer employs 50 or more people on a permanent basis and the employee has been employed for the prior 52 weeks and worked at least 1000 hours during that period, the employee is entitled to unpaid leave under the law in connection with birth during any leave taken under the law. An employee may decide to use accrued paid leave instead of unpaid leave. The employer must maintain the same group health insurance coverage for the employee as existed prior to the leave, with the same conditions that applied prior to the leave.

Q. Is the employer required to pay part of a woman's salary while she is on a pregnancy disability leave?

A. No. The employer is required to pay only such benefits as are paid to employees who are on disability leaves due to reasons other than pregnancy.

Q. May a union and employer enter into a health or disability insurance contract which excludes maternity benefits?

A. No. The union and employer are both subject to the Wisconsin Fair Employment Law and held accountable for entering into a discriminatory contract.

Q. Can there be a waiting periods before maternity coverage begins?

A. There can be the same waiting period before maternity coverage takes effect as there is for coverage of other health conditions.

Q. If a pregnant employee leaves the job; does the employer have to pay maternity benefits?

A. If the benefits for other conditions are extended beyond the termination of employment, and then benefits for maternity must be extended also. If benefits for other conditions end, they can end for maternity.

Q. Must employers provide health insurance coverage for the medical expenses of pregnancy-related conditions of the spouses of male employees or the dependents of all employees?

A. When an employer provides no coverage for dependents, the employer is not required to begin such coverage. However, every group health insurance policy, which provides coverage of dependent children and maternity coverage for any individual, shall provide maternity coverage for dependent children. Wisconsin Insurance Commission rules require that complications of pregnancy be covered in all health insurance plans.

Q. When an employer offers its employees a choice among several health insurance plans must coverage for pregnancy-related conditions be offered in all the plans?

A. Yes. Each of the plans must cover pregnancy-related conditions. An employee with a single coverage policy must receive coverage for her own pregnancy-related condition and not be forced to carry a family policy. However, a single person could be required to purchase a family policy in order to provide coverage for a child.

Q. When an employee converts from the group medical coverage to an individual policy upon terminating employment, do the laws regarding discrimination apply to the individual policy?

A. Yes. A new conversion policy must be offered which provides the same coverage for pregnancy-related conditions as it provides for other medical conditions. If the coverage is reduced for all conditions, it may be reduced on the same basis for pregnancy-related conditions.

Q. Is an employee who is unable to work because of pregnancy-related temporary disability eligible for worker's compensation?

A. No. Worker's compensation is available only to those persons who have a job-related illness or injury.

Q. What laws specifically apply to maternity benefits available to employees?

A. Both federal and state laws address the matter of maternity benefits. The Pregnancy Amendments of Title VII of the Civil Rights Act of 1964 is the federal legislation.

The Wisconsin Fair Employment Act (111.31-111.395, Wis.Stats.) includes the following language regarding maternity:

"111.36(1) Employment discrimination because of sex includes, but is not limited to any of the following actions by any employment, labor organization, employment agency, licensing agency or other person

111.36(1) (c) Discriminating against any woman on the basis of pregnancy, childbirth, maternity leave or related medical conditions by engaging in any of the actions prohibited under s. 111.322, including, but not limited to, actions concerning fringe benefit programs covering illnesses and disability."

Wisconsin's Family and Medical Leave Law applies to employers with 50 or more permanent employees and employees of those employers who have been employed for the prior 52 weeks and have worked at least 1,000 hours during that period.

Q. Are insurance companies bound by these laws?

A. These laws apply only to employers. It is the employer or union's responsibility to buy insurance policies, which comply with the law. There is no comparable obligation on insurance companies. However, an insurance company would be wise to advise an employer/union-client of the legal obligations regarding maternity benefits.

Q. Are there any differences in federal and state laws?

A. There are no differences in what is required in the federal and state discrimination laws in the treatment of pregnant employees by an employer. Federal discrimination law applies only to those employers with 15 or more employees. Wisconsin's Fair Employment Act covers all employers in Wisconsin. The federal and state family and medical leave laws apply to employers with 50 or more permanent employees. However, the two laws differ in key areas. For a comparison between the federal and state family and medical leave laws, contact the Wisconsin Equal Rights Division.

Q. Does it make any difference whether an employment-related maternity complaint is filed with the federal Equal Employment Opportunity Commission (EEOC) or Wisconsin's Equal Rights Division (ERD)?

A. As to claims of discrimination, not really. In Wisconsin, The EEOC and the ERD have a work sharing agreement that requires complaints to be co-filed with each other unless the complainant objects. There are some differences in the procedures followed by the state and federal agency when a complaint is filed. Attorney's fees are available through a successful action under both federal and state law.

Claims that the Wisconsin Family and Medical Leave Act have been violated must be filed with the Wisconsin Equal Rights Division within 30 days of knowing about the alleged violation. A claim under the federal family and medical leave law must be filed with the U. S. Labor Department, Wage and Hour Division.

Q. What usually happens when an employment-related maternity complaint is filed with the Wisconsin Equal Rights Division?

A. Since case law and precedents in discrimination cases are quite well established, the parties in pregnancy discrimination cases frequently achieve prompt settlements. Please ask for a copy of the brochure "Wisconsin Fair Employment Law and Complaint Process" for more information about the steps in processing a discrimination complaint.

Q. Where should I go for further information?

A. If you have questions regarding maternity benefits in an employer-employee relationship, contact:

**DEPARTMENT OF WORKFORCE DEVELOPMENT
EQUAL RIGHTS DIVISION**

**201 E WASHINGTON AVE
PO BOX 8928
MADISON WI 53708
(608) 266-6860
(608) 264-8752(TTY)**

**819 N 6TH ST
ROOM 255
MILWAUKEE WI 53203
(414) 227-4384
(414) 227-4081(TTY))**

If you want more information about the federal regulations or wish to file a complaint under the Pregnancy Discrimination Amendments to the Civil Rights Act, you should contact:

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
310 W WISCONSIN AVE, SUITE 800
MILWAUKEE WI 53203
(414) 291-1111**

If you have an insurance problem and cannot get the answer, you need from the agent or company involved, please contact:

**OFFICE OF COMMISSIONER OF INSURANCE
121 E WILSON ST
MADISON WI 53702
(608) 266-0103**

Mailing Address: PO BOX 7873 MADISON WISCONSIN 53707

If you wish to file a complaint under the federal Family and Medical Leave Law, or seek information on this law, please contact:

**U S DEPARTMENT OF LABOR
212 E WASHINGTON AVE - ROOM 309
MADISON WI 53703
WAGE AND HOUR DIVISION
MADISON OFFICE: (608) 414-5221 MILWAUKEE OFFICE: (414) 297-3585**

The Department of Workforce Development is an equal opportunity service provider. If you need assistance to access services or need material in an alternate format, please contact us. Deaf, hearing or speech-impaired callers may reach us in: Madison at (608) 264-8752 or in Milwaukee at (414) 227-4081

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